

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 INDECK KEYSTONE ENERGY, LLC,
4 Plaintiff

5 v.

6 VICTORY ENERGY OPERATIONS, LLC,
7 Defendant

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: Case No. 04-325 Erie

8 Videotape deposition of CHRISTOS PETCOS, taken
9 before and by Sondra A. Black, Notary Public in
10 and for the Commonwealth of Pennsylvania, on Wednesday,
11 November 9, 2005, commencing at 8:08 a.m., at the
12 offices of Marshall Dennehey Warner Coleman & Goggin,
13 1001 State Street, Erie, Pennsylvania 16501.
14

15
16 For the Plaintiff:

17 John K. Gisleson, Esquire
18 Schnader Harrison Segal & Lewis, LLP
19 Fifth Avenue Place
120 Fifth Avenue, Suite 2700
Pittsburgh, PA 15222

20 For the Defendant:

21 Christopher T. Sheean, Esquire
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23 225 West Wacker Drive
Chicago, IL 60606
24

25 Reported by Sondra A. Black
Ferguson & Holdnack Reporting, Inc.

CONFIDENTIAL

EXHIBIT

60

tabbles

09:46 AM 1

A. No.

2

3

4

09:46 AM 5

agreement?

6

A. No.

7

8

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09:46 AM 10

Victory Energy?

11

A. I don't recall.

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09:47 AM 15

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09:47 AM 20

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09:47 AM 25

Q. Did you mention to Mr. Milligan that Victory Energy had sold several 100 percent membrane wall boilers with the consent of Erie Power under the terms of the license

Q. Have you ever had -- strike that. Other than the conversations you discussed with me thus far this morning, have you had any conversations with Allen Christian regarding

Q. Other than the conversation you just identified with Ian Milligan, have you had any other conversations with Victory Energy -- strike that. Other than the conversation

you've already identified today regarding Victory Energy with Ian Milligan, have you had any other conversations with Mr. Milligan regarding Victory Energy?

A. I don't believe so.

Q. Have you discussed the Victory Energy license agreement with any other representatives that you can recall, other than ones you've already testified to today?

A. I don't recall. Maybe.

Q. I mean, certainly there were the 20 or so Indeck representatives that you discussed the license agreement with at the sales rep meeting you've already discussed in April or

09:47 AM 1 May of 2005, correct?

2 A. Correct.

3 Q. Have you ever met an individual named Dirk Poppin?

4 A. Dirk Poppin?

09:48 AM 5 Q. Yes, sir.

6 A. I don't believe so.

7 Q. Do you know Jim Mitchell?

8 A. Jim Mitchell, I don't believe so. And if -- if he
9 is one of our new reps, I apologize, but I -- I don't know

09:48 AM 10 the names of all of our new reps.

11 Q. To the best of your knowledge, has any IKE
12 representative ever told a current or prospective customer of
13 Victory Energy that Victory Energy is no longer able to sell
14 Keystone boilers of any type?

09:48 AM 15 A. No.

16 Q. Have you ever been to the Volcano plant in Montreal,
17 Canada?

18 A. It's Indeck Boiler Corporation, yes.

19 Q. It used to be known as Volcano, correct?

09:49 AM 20 A. Correct.

21 Q. How many times have you been to the Indeck Boiler
22 Corp. plant in Montreal?

23 A. Once.

24 Q. When was that?

09:49 AM 25 A. I don't remember if it was last fall or early

03:13 PM 1 of the sales manual at some point.

2 A. Not knowing what version, but, yeah, I've scanned
3 through it, yes.

4 Q. Did you ever become aware that employees of Erie
03:13 PM 5 Power put together a power point presentation for Victory
6 Energy?

7 A. I believe so.

8 Q. When did you become aware of that?

9 A. I'm not sure.

03:13 PM 10 Q. Was it before or after you became general manager of
11 Indeck Keystone Energy?

12 A. Before.

13 Q. Do you know how you became aware of the power point?

14 A. No.

03:14 PM 15 Q. We've handed you what's been marked as Petcos
16 Exhibit No. 8, which, for the record, is a multi-page
17 document beginning VE00646 through 0658. Do you see that?
18 (Petcos Deposition Exhibit No. 8 marked for
19 identification.)

03:14 PM 20 A. Yes.

21 Q. Have you ever seen this document before?

22 A. Not sure specifically this document, but one that's
23 similar, yes.

24 Q. When you say "one that's similar," can you identify
03:14 PM 25 any differences between this document and the one you saw?

03:14 PM 1

A. No.

2

Q. Can you recall any conversations you had with anyone with respect to this power point?

3

A. Let me think here. Just that it's a general power

03:15 PM 5

point presentation that we've used to sell package boilers

6

back when we were Erie Power Technologies. Not just the

7

standard M series.

8

Q. You see the first page -- first slide, rather, says,

9

"Keystone O, Victory license, this presentation for the sales

03:15 PM 10

training" -- I'm sorry, "for the training of Victory

11

personnel as relates to sales and marketing functions." Do

12

you see that?

13

A. Yes.

14

Q. Doesn't cover the full range of features or

03:15 PM 15

abilities of the Keystone O. Presentation does not cover

16

in-depth technical issues related to design and process." Do

17

you see that?

18

A. Yes.

19

Q. Do you have any idea who prepared this power point

03:16 PM 20

presentation?

21

A. Not 100 percent, but possibly Gary Blasiec.

22

Q. Do you see on Page 2, which is VEO647, bottom slide,

23

the print's kind of small to read but it says, "3D of

24

Keystone with optional watercooled front and superheater."

03:16 PM 25

Do you see that?

03:16 PM 1

A. Yes, I do.

2

Q. Do you know whether or not anyone informed Victory

3

during this presentation that this slide should be

4

disregarded or otherwise eliminated from the presentation

03:16 PM 5

because watercooled front boilers were not being offered

6

under the Keystone Victory Energy license?

7

A. No. Again, this was a general presentation that we

8

used in the past. So it was probably put together very

9

quickly to give something to Victory.

03:16 PM 10

Q. And the answer to my question was no, correct?

11

A. Correct.

12

Q. And if you look at Page 5, which is VEO650, the

13

middle slide is the drawing of the boiler with the tube

14

layout in part, and on the bottom left corner it says, "Top

03:17 PM 15

view of refractory front, tube and tile rear, tube and

16

membrane furnace, and tube and membrane outer." Do you see

17

that?

18

A. Yes, I do.

19

Q. Again, do you know whether or not anyone affiliated

03:17 PM 20

with Erie Power informed Victory at the time of this power

21

point presentation that it should disregard the slide as

22

inapplicable under the terms of the license agreement?

23

A. No.

24

Q. Is it your position that the tube and membrane

03:18 PM 25

furnace and tube and membrane outer wall designs for the

03:18 PM 1 Keystone O were excluded from the license agreement?

2 MR. GISLESON: Objection. Asked and answered.

3 A. Is it my opinion that they are not part of the
4 license agreement?

03:18 PM 5 Q. Yes, sir.

6 A. Yeah. The membrane furnace and outer wall is not
7 part of the license agreement. This is just a general power
8 point presentation that was given to assist Victory in
9 preparing one.

03:18 PM 10 Q. Do you know why Erie Power employees provided
11 Victory with slides that, in your opinion, included features
12 of the Keystone boiler that were outside the scope of the
13 license?

14 MR. GISLESON: Objection to the extent you're
03:18 PM 15 assuming it's multiple employees.

16 A. Yeah, as I mentioned earlier, it was -- it was a lot
17 easier to take one that was existing and provide it to -- to
18 VEO.

19 Q. Do you know, specifically, why these slides were
03:18 PM 20 included, though?

21 A. No, I don't.

22 Q. And if you look at Page 6, which is VEO651, it shows
23 in the second slide optional front wall, and it says,
24 "Watercooled welded wall membrane design, watercooled burner
03:19 PM 25 throats." Do you see that?

04:22 PM 1 Do you recall that?

2 A. Yes.

3 Q. And in looking at Clause 8A it says, "Licensee will
4 have the right to modify the products provided, however, that
04:22 PM 5 such modifications will not diminish the reliability and the
6 performance of the said products. Licensee will submit to
7 licensor such plans for modifications for prior written
8 approval by licensor except for the alterations as defined in
9 Clause 3E." Do you see that?

04:23 PM 10 A. Yes.

11 Q. At any point during the time that Indeck Keystone
12 Energy was the licensor did VEO ever contact IKE for prior
13 written approval of a modification that VEO wished to make?

14 A. No.

04:23 PM 15 Q. During the time that IKE has been the licensor under
16 this license agreement, has IKE ever authorized VEO in
17 writing to make any modifications to the standard Keystone
18 boiler that's the subject of the license agreement?

19 A. Nope.

04:23 PM 20 Q. You were shown a copy of a marketing presentation in
21 Petcos Exhibit 8; is that right?

22 A. Correct.

23 Q. Can you describe what this is.

24 A. That is a -- what looks like a -- what's very
04:24 PM 25 similar to our general package boiler power point

04:24 PM 1

presentation used for all package O style boilers.

2

Q. Is this the typical proposal for all Keystone boilers sold by IKE or its predecessor EPTI?

4

A. Yes, it is.

04:24 PM 5

Q. Was that developed by EPTI?

6

A. Or -- yes. And/or Zurn Energy Division.

7

Q. Was that sales proposal used for all Keystones regardless of the size or characteristics?

9

A. Yes.

04:24 PM 10

Q. Did EPTI have a separate marketing -- strike that. I'm sorry, what did you call this?

11

12

A. Sales power point presentation for O style boilers.

13

Q. Did EPTI have a separate sales power point presentation just for the M series standard line of boilers that was licensed to VEO?

14

04:25 PM 15

16

A. No. Not that was utilized.

17

Q. If we look at Exhibit 5, which is the copy of the annexes to the license agreement, and look specifically at Annex No. 2. If you could look at Paragraph No. 7. Do you

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19

04:26 PM 20

see Paragraph No. 7 in Annex 2 to the license agreement states that, "Licensor will provide licensee with typical sales proposal information."?

21

22

23

A. Yes.

24

04:26 PM 25

Q. "To include unpriced technical proposal, drawing package to include typical arrangement, GA and plan drawings,

04:28 PM 1 license agreement. Have you become aware that during the
2 time that Mark White was employed by EPTI that he was advised
3 by Bob Gdaniec, among others, that membrane walls are outside
4 the scope of the license agreement?

04:28 PM 5 A. Yes.

6 Q. You were shown a copy of the Keystone engineering
7 design guide, which was marked as Exhibit 29 --

8 MR. SHEEAN: I think it was 20 for Bob Gdaniec's
9 deposition.

04:29 PM 10 Q. 20, what's the purpose of the Keystone engineering
11 design guide?

12 A. That is to assist in the design of all O style
13 Keystone package boilers.

14 Q. So it applies to both the boilers licensed to VEO as
04:29 PM 15 well as boilers that are outside the scope of the license
16 agreement?

17 A. Yes. All standard M series boilers are O boilers,
18 but not all O boilers are M series.

19 Q. What do you mean by that?

04:29 PM 20 A. The standard M series design is a specific geometry
21 of length, width, and height with the refractory front wall,
22 tube and tile rear wall, tangent furnace, and tangent outer
23 walls. As I mentioned earlier, I was just repeating what was
24 in that document. Zurn, our predecessor, had sometimes sold
04:30 PM 25 special M series designs with welded walls, and -- but that's

04:31 PM 1 design guide that relates to the standard Keystone boiler
2 that was licensed to VEO?

3 A. Yes.

4 Q. Is the Keystone engineering design guide proprietary
04:31 PM 5 to EPTI and now IKE?

6 A. Yes.

7 Q. Can the Keystone engineering design guide be
8 utilized to design and manufacture boilers that are outside
9 the scope of the license agreement to VEO?

04:31 PM 10 A. Yes.

11 Q. Have you seen -- strike that. You were asked about
12 whether any modifications to the license agreement between
13 EPTI, now IKE, and VEO had to be in writing. Do you remember
14 that line of questioning?

04:32 PM 15 A. Yes.

16 Q. Have you seen any written modifications to the
17 license agreement providing that VEO may sell Keystone
18 boilers with membrane wall technology?

19 A. No.

04:32 PM 20 Q. During the time that you have been general manager
21 of IKE while IKE has been the licensor, did you enter into
22 such a modification?

23 A. No.

24 Q. During the time that IKE has been the licensor under
04:32 PM 25 the license agreement, did you authorize VEO to sell any

04:32 PM 1 boilers outside the scope of the license agreement?

2 A. No.

3 Q. Did you authorize VEO to utilize the Keystone name
4 in connection with any proposals that were outside the scope
04:32 PM 5 of the license agreement?

6 A. No.

7 Q. Or to use the Keystone name in connection with the
8 sale of any boilers that were outside the scope of the
9 license agreement?

04:33 PM 10 A. No.

11 Q. You were asked some questions about deaerators and
12 heating coils and whether they could be used with a standard
13 Keystone. Do you recall those questions?

14 A. Yes.

04:33 PM 15 Q. Did anyone from VEO, whether Mark White or someone
16 else at VEO, contact you to discuss the use of deaerators and
17 heating coils with the standard Keystone boilers?

18 A. No.

19 Q. You were asked about the return of the Keystone
04:34 PM 20 technical information after the license agreement expires.
21 Do you recall that?

22 A. Yes.

23 Q. Are you aware that VEO has advised IKE that it will
24 return technical information it received from EPTI to the
04:34 PM 25 license agreement to IKE at the conclusion of the license

04:53 PM 1 included membrane wall construction, correct?

2 A. I -- if that's what -- what was said in the
3 depositions.

4 Q. Have you been present during any depositions where
04:53 PM 5 testimony similar to that was stated?

6 A. Part of certain people's depositions, yes.

7 MR. SHEEAN: Those are all the questions I have.

8 MR. GISLESON: There's one question I forgot to
9 ask.

04:53 PM 10

11 RECROSS-EXAMINATION

12 BY MR. GISLESON:

13

14 Q. You were asked questions about the KPSC software; is
04:53 PM 15 that right?

16 A. Yes.

17 Q. Was that software developed solely for the Keystone
18 M series?

19 A. No, it was not.

04:53 PM 20 Q. What was it developed for?

21 A. That software was developed to rate industrial
22 boilers, the complete line of O style boilers, and also, it
23 could be utilized to rate any type of boiler.

24 Q. Did EPTI or its predecessors ever develop a KPSC
04:53 PM 25 software that was limited just to the Keystone M series?

04:54 PM 1

A. I don't believe so.

2

MR. GISLESON: Those are all the questions I have.

3

MR. SHEEAN: Nothing further.

4

MR. GISLESON: Witness will reserve the right to

04:54 PM 5

read and sign.

6

MR. SHEEAN: And I assume that, not to do your job

7

for you, John, but you want to designate this

8

deposition --

9

MR. GISLESON: I meant to say that. Thank you.

04:54 PM 10

Yes, we do. Since a number of confidential

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documents were used, particularly the design guide,

12

we want to consider the transcript confidential.

13

MR. EVANOFF: That concludes the video deposition.

14

It's 4:53 p.m.

04:54 PM 15

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(Deposition concluded at 4:53 p.m.)

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